IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

ST.Rev..No. 216 of 2007

TA.237/2006 OF S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD, DATED 21.03.2007

REVISION PETITIONER/APPELLANT/ASSESSEE:

M/S. K.H. FLOORINGS, PATTAMBI.

BY ADV. SRI.K.SRIKUMAR
SRI.K.MANOJ CHANDRAN
SRI.P.R.AJITHKUMAR

RESPONDENTS: RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY THE GOVERNMENT PLEADER,
HIGH COURT OF KERALA.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SRI.V.V.ASHOKAN

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

S.T.REV. NO. 216 OF 2007

Dated this the 27th June, 2007

O R D E R

H.L.DATTU, C.J.

This revision petition is filed against the orders passed by the Kerala Sales Tax Appellate Tribunal, Palakkad in T.A.No.237 of 2006, dated 21st March 2007, for the assessment year 1997-98.

2. The assessee before us is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 and the Central Sales Tax Act. Petitioner is engaged in the business of sale of marble slabs and tiles, granite slabs and tiles, cudappa stones etc.. For the assessment year 1997-98, petitioner had filed annual return before the assessing authority declaring the total and taxable turnover.

3. The assessing authority, after rejecting the return filed by the assessee and based on the information supplied by the officers of the Intelligence Wing of the Department, had proceeded to complete the assessment and while doing so, has enhanced the taxable turnover of the assessee by three times of the suppressed turnover and thereafter has quantified the tax liability of the assessee.

4. The assessee, being aggrieved by the aforesaid order passed by the assessing authority for the year 1997-98, had filed an appeal before the first appellate authority, who in turn, has modified the order passed by the

assessing authority and has reduced the addition made by the assessing authority by two times of the suppression detected by the Intelligence Wing of the Department.

5. Not being satisfied with the order so passed by the first appellate authority, the assessee had carried the matter by way of second appeal before the Sales Tax Appellate Tribunal. The Tribunal once again taking into consideration the suppression detected has directed the assessing authority to make an addition of one and half times of the suppression detected. Not being satisfied with the order so passed, the assessee is before us in this Tax Revision Case, filed under Section 41 of the Act.

6. The assessee has raised the following questions of law for our consideration and decision. They are as under:

> "A) Whether the Tribunal was justified in sustaining the addition at one and half times the alleged suppression reckoned in the penalty proceedings when the penalty proceedings itself is under challenge and pending consideration before this Hon'ble Court?
>
> B) Whether the Tribunal was justified in sustaining the addition at one and half times, the alleged suppression reckoned in the penalty proceedings when the same is not having any rational nexus to the available materials on record?
>
> C) In Annexure-3 order, the Tribunal has specifically found that the addition sustained in

> the 1st appeal is on the higher end and excessive. In such circumstances, whether the Tribunal was justified in fixing the quantum of addition as one and half times, the suppression detected, that too without any specific finding and materials on record, instead of remanding the matter to the assessing authority for fresh consideration?"

7. Learned counsel appearing for the assessee would submit that the Tribunal was not justified in making an addition of one and half times of the suppression detected by the Intelligence Wing of the Department. Therefore, submits that the order passed by the Tribunal requires to be nullified by this Court.

8. The assessing authority had passed the above judgment based on the report of the Intelligence Wing of the Department. He was of the opinion that an addition of three times of the suppression detected should be included in the total turnover of the assessee. This is modified by the first appellate authority as well as by the Tribunal.

9. For us to interfere in a revision filed under Section 41 of the Act, the Tribunal must have either erroneously decided the question of law or failed to decide the question of law.

10. In the present case, the above ingredient is not present before us. The Tribunal, while allowing the appeal filed by the assessee, has

only reduced the addition made by the assessing authority to one and half times of the suppression detected by the Intelligence Wing of the Department and has directed the assessing authority to quantify the tax liability. The decision that is rendered by the Tribunal is purely a question of fact and cannot be interfered with by us in a revision filed under Section 41 of the Act. Therefore, without reference to the respondent, the revision requires to be rejected and it is rejected.

In view of the order passed in the revision, the relief sought in I.A.No.1531 of 2007 need not be considered by this Court. Accordingly, the said application is also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/